

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201610382	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/16/2016 2:30 PM	Location of Incident: 60 East 102nd Street; 23rd Precinct stationhouse	Precinct: 23	18 Mo. SOL 5/16/2018	EO SOL 5/16/2018	
Date/Time CV Reported Tue, 12/20/2016 4:23 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/20/2016 4:23 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Callinan	17721	945542	023 PCT
2. SGT Joseph Hartnett	03141	938641	023 PCT
3. POM Johnny Rivera	09325	949548	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Callinan	Abuse: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan stopped § 87(2)(b)	
B.SGT Joseph Hartnett	Abuse: At 60 East 102nd Street in the Bronx, Sergeant Joseph Hartnett stopped § 87(2)(b)	
C.POM Daniel Callinan	Abuse: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan stopped § 87(2)(b)	
D.SGT Joseph Hartnett	Abuse: At 60 East 102nd Street in the Bronx, Sergeant Joseph Hartnett stopped § 87(2)(b)	
E.POM Daniel Callinan	Abuse: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan frisked § 87(2)(b)	
F.POM Daniel Callinan	Abuse: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan searched § 87(2)(b)	
G.POM Daniel Callinan	Abuse: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan frisked § 87(2)(b)	
H.POM Daniel Callinan	Abuse: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan searched § 87(2)(b)	
I.POM Daniel Callinan	Discourtesy: At the 23rd Precinct stationhouse, Police Officer Daniel Callinan spoke discourteously to § 87(2)(b)	
J.POM Daniel Callinan	Abuse: At the 23rd Precinct stationhouse, Police Officer Daniel Callinan issued a summons to § 87(2)(b)	
K.SGT Joseph Hartnett	Abuse: At the 23rd Precinct stationhouse, Sergeant Joseph Hartnett supervised the issuance of a summons to § 87(2)(b)	
L.POM Daniel Callinan	Abuse: At the 23rd Precinct stationhouse, Police Officer Daniel Callinan arrested § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.SGT Joseph Hartnett	Abuse: At the 23rd Precinct stationhouse, Sergeant Joseph Hartnett supervised the arrest of § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

### Case Summary

On November 16, 2016, § 87(2)(b) filed this complaint with the CCRB via telephone.

On November 16, 2017, at approximately 2:30 p.m., Sgt. Joseph Hartnett and PO Daniel Callinan stopped § 87(2)(b) and § 87(2)(b) in front of 60 East 102<sup>nd</sup> Street, in Manhattan (**Allegations A, B, C, and D**). Upon approach, PO Callinan allegedly frisked and searched § 87(2)(b) and § 87(2)(b) (**Allegations E, F, G, and H**). § 87(2)(b) and § 87(2)(b) were handcuffed and transported to the 23<sup>rd</sup> Precinct via a police vehicle.

At the 23<sup>rd</sup> Precinct stationhouse, while in the holding cells, § 87(2)(b) heard PO Callinan tell § 87(2)(b) “Suck my dick (**Allegation I**).” At the stationhouse, § 87(2)(b) was released with a § 87(2)(b) summons which Sgt. Hartnett verified (**Allegation J and K**). During this incident, § 87(2)(b) was arrested and charged with § 87(2)(b) which Sgt. Hartnett also verified (**Allegation L and M**).

§ 87(4-b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b) arrest.
- A Notice of Claim query was sent via email on April 4, 2017. On April 10, 2017, the New York Comptroller’s office indicated that neither § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim in regards to this incident (Board Review 23).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■ [REDACTED]

■ [REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■ [REDACTED]

■ [REDACTED]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint § 87(2)(b) and § 87(2)(b) has filed (Board Review 12 and 13).
- PO Callinan has been a member of the NYPD for 9 years and has had 17 CCRB allegations pleaded against him in five cases; one of his previous allegations has been substantiated. § 87(2)(g)
  - In case number 201200276, an allegation of a physical force was substantiated and the Board recommended charges. PO Callinan was found not guilty at an APU trial and thus the NYPD did not impose any penalty. Additionally, an allegation of discourtesy was unsubstantiated. § 87(4-b) § 87(2)(g)
- Sgt. Hartnett has been a member of NYPD for 11 years and this is his first CCRB complaint.
- PO Rivera has been a member of the NYPD for six years and has had seven CCRB allegations pleaded against him in five cases; none of his previous allegations were substantiated. § 87(2)(g)

### **Potential Issues**

- Because this case was filed over 30 days from the incident date, the retention period for the NYCHA video footage had passed.
- Despite numerous contact attempts, § 87(2)(b) did not provide a statement or schedule an interview.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- In his phone statement, § 87(2)(b) described a fourth officer who was present during the incident (Board Review 22). However, in his CCRB interview, § 87(2)(b) could not describe this officer (Board Review 01). Moreover, all of the officers interviewed did not state that there was a fourth officer present during the incident (Board Review 02, 04, and 05).

- All of the officers' testimony indicated that it was PO Callinan's decision to stop and arrest § 87(2)(b) and § 87(2)(b) (Board Review 02, 04, and 05). § 87(2)(g)
- Sgt. Hartnett was the highest ranking officer on the scene and he also acknowledged that he verified the arrests of § 87(2)(b) and § 87(2)(b) § 87(2)(g)

**Allegation A –Abuse of Authority: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan stopped § 87(2)(b)**

**Allegation B –Abuse of Authority: At 60 East 102nd Street in the Bronx, Sergeant Joseph Hartnett stopped § 87(2)(b)**

**Allegation C –Abuse of Authority: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan stopped § 87(2)(b)**

**Allegation D –Abuse of Authority: At 60 East 102nd Street in the Bronx, Sergeant Joseph Hartnett stopped § 87(2)(b)**

In his CCRB testimony, § 87(2)(b) stated that as he and § 87(2)(b) were standing outside of 50 East 102<sup>nd</sup> Street he saw PO Callinan, Sgt. Hartnett, and PO Rivera entering 50 East 102<sup>nd</sup> Street (Board Review 01). Moments later, as § 87(2)(b) and § 87(2)(b) went towards the benches by 60 East 102<sup>nd</sup> Street, PO Callinan, Sgt. Hartnett, and PO Rivera approached them.

As noted above, § 87(2)(b) did not provide a statement pursuant with the investigation.

During her telephone statement, § 87(2)(b) denied seeing the interaction between the civilians and the officers (Board Review 06).

During the incident, PO Callinan was working as the Field Intelligence Officer (FIO). In his CCRB statement, PO Callinan stated that it was his responsibility to debrief the prisoners at the 23<sup>rd</sup> Precinct and that he had encountered § 87(2)(b) approximately half a dozen times in the stationhouse and on the street (Board Review 02). PO Callinan recognized § 87(2)(b) by name and face from prior interactions and also knew of § 87(2)(b) from prior interactions through dealings in the neighborhood. PO Callinan stated that he knew that they both did not live in 60 East 102<sup>nd</sup> Street, but he did not state how or when he obtained this information. PO Callinan stated that he did not know if § 87(2)(b) had been arrested or issued a summons for trespassing in the past and stated that none of his previous encounters with § 87(2)(b) resulted in an arrest or a summons issued. Additionally, he did not recall if § 87(2)(b) has ever been arrested for trespassing. Neither Sgt. Hartnett nor PO Rivera had any prior knowledge of § 87(2)(b) or § 87(2)(b) (Board Review 04 and 05). Additionally, Sgt. Hartnett and PO Rivera both stated that they were familiar with the location, but only PO Rivera mentioned that this was a “known drug location.”

PO Callinan stated that they were initially at the location in regards to an investigation which he refused to elaborate during the interview because the investigation was still ongoing. In PO Rivera's CCRB testimony, PO Rivera stated that prior to going to the location, while at the stationhouse, PO Callinan requested him to be his back up § 87(2)(e) PO Rivera was not provided with any additional information. In Sgt. Hartnett's CCRB testimony, Sgt. Hartnett stated he was also requested by PO Callinan to accompany him to the location. Sgt.

Hartnett stated that he was not provided with any information as to what PO Callinan was doing at the location and he did not ever establish why PO Callinan went there.

While standing approximately 10-15 yards away from the entrance of 60 East 102<sup>nd</sup> Street, PO Callinan observed § 87(2)(b) and § 87(2)(b) hanging out and standing inside the lobby. PO Callinan stated that he observed them for approximately one or two minutes to see if they were going up to visit someone. PO Callinan stated that he did not recall having any discussions with Sgt. Hartnett or PO Rivera in regards to his observations. PO Callinan acknowledged that it was his decision to approach § 87(2)(b) and § 87(2)(b) to inquire about whether or not they had any business inside the location. PO Callinan denied approaching them for any other reasons and did not see them committing any crimes. PO Callinan asked what their business was in the building and if they had family in the building, or they were visiting. In response, § 87(2)(b) stated that he was hanging out with § 87(2)(b) and § 87(2)(b) did not answer PO Callinan's questions. After speaking to them briefly, they informed PO Callinan that they were not visiting anyone and that they did not live in the building. At this point, PO Callinan determined that they were both going to be arrested for trespassing. PO Callinan stated that he did not recall if he or any officers asked for § 87(2)(b) or § 87(2)(b) ID on the scene, but affirmed that a query of their names was not done until they returned to the stationhouse.

Similar to PO Callinan's testimony, PO Rivera also stated that he saw § 87(2)(b) and § 87(2)(b) inside the lobby of 60 East 102<sup>nd</sup> and that PO Callinan approached them when they were inside. On the contrary, in Sgt. Hartnett's testimony, Sgt. Hartnett stated that he believed he saw § 87(2)(b) and § 87(2)(b) exit 60 East 102<sup>nd</sup> Street, and that the officers did not approach them until they were on the bottom landing outside of the building.

Sgt. Hartnett and PO Rivera both stated that PO Callinan initiated the approach of the two individuals and did not recall any discussions in regards to § 87(2)(b) or § 87(2)(b). Sgt. Hartnett stated that he did not recall why he approached § 87(2)(b) and § 87(2)(b). PO Rivera stated that he approached to serve as backup for PO Callinan. Sgt. Hartnett and PO Rivera both denied seeing § 87(2)(b) or § 87(2)(b) committing any crimes during the incident. Sgt. Hartnett stated that PO Callinan was the only one speaking with § 87(2)(b) and § 87(2)(b) but he did not recall any of the conversation. Additionally, PO Rivera stated that he did not recall if there was any conversation in regards to whether or not § 87(2)(b) and § 87(2)(b) lived at the location. § 87(2)(b) and § 87(2)(b) were both arrested on the scene for § 87(2)(b) and § 87(2)(b) was later released from the stationhouse with a summons.

The arrest report and the summons, both written by PO Callinan, corroborated PO Callinan's testimony noting that the occurrence location was "inside 60 East 102<sup>nd</sup> Street" (Board Review 17 and 18).

In a level 1 encounter, a police officer may seek information related to the reason(s) the person was approached, such as the person's name, address and destination if those questions are related to the objective credible reason for the approach. The officer may not ask accusatory questions. The person may refuse to answer questions and/or walk or even run away. Refusal to answer questions and/or walking or running away does not escalate the encounter. During a Level 2 encounter, a common law right of inquiry is an encounter between a civilian and a uniformed

member of the service conducted for the purpose of asking the civilian pointed or accusatory questions because the police officer has a “founded suspicion” that criminal activity is afoot. Additionally, force may not be used, the person is free to refuse to answer questions, and is free to leave. Refusal to answer questions or walking away does not raise the level of suspicion. Patrol Guide Procedure 212-11 (Board Review 07).

If a person is merely standing in the lobby of a public housing project building and there is no evidence of prior criminality at that location, the police are not permitted to approach and question that individual for the purpose of determining whether he or she lives there. A person's mere presence in a public housing project building known for drug activity would, however, be sufficient to justify a police officer's inquiry into whether the person was there lawfully, People v Ventura, 30 Misc. 3d 587 (2010) (Board Review 10).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation E –Abuse of Authority: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan frisked § 87(2)(b)**

**Allegation F –Abuse of Authority: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan searched § 87(2)(b)**

**Allegation G –Abuse of Authority: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan frisked § 87(2)(b)**

**Allegation H –Abuse of Authority: At 60 East 102nd Street in the Bronx, Police Officer Daniel Callinan searched § 87(2)(b)**

It is undisputed that PO Callinan searched § 87(2)(b) and § 87(2)(b). The investigation determined that PO Callinan frisked § 87(2)(b) and § 87(2)(b).

In his CCRB testimony, § 87(2)(b) stated that after the officers approached him and § 87(2)(b) an unidentified officer asked if he had anything in his pocket that would poke them (Board Review 01). In response, § 87(2)(b) and § 87(2)(b) said “no.” § 87(2)(b) stated that PO Callinan patted his coat and pants pockets and also placed his hand inside each pocket. PO Callinan also patted around his socks and pulled his socks down. § 87(2)(b) stated that he was placed in handcuffs after he was frisked and searched. § 87(2)(b) stated that he also saw § 87(2)(b) being frisked and searched in the same manner.

As stated above, § 87(2)(b) did not provide a statement to the CCRB and § 87(2)(b) did not witness the occurrence that occurred outside (Board Review 06).

In his CCRB testimony, PO Callinan acknowledged searching § 87(2)(b) and § 87(2)(b) after they were placed in handcuffs incident to a lawful arrest for § 87(2)(b) (Board Review 02). PO Callinan did not recall if § 87(2)(b) and § 87(2)(b) were frisked.

In his CCRB testimony, PO Rivera stated that § 87(2)(b) and § 87(2)(b) were handcuffed within a couple of seconds after the officers approached them (Board Review 04). PO Rivera saw PO Callinan frisking § 87(2)(b) and § 87(2)(b) before they were handcuffed by patting down their outer clothing. PO Rivera denied frisking or searching them. He also saw PO Callinan searching them immediately before handcuffing them to check if they had any weapons. He did not recall if the frisk or the search was performed first.

Sgt. Hartnett stated in his CCRB testimony that he recalled PO Callinan frisking either one or both civilians at some point (Board Review 05). Sgt. Hartnett was not informed by PO Callinan as to why the frisk was performed. Sgt. Hartnett did not recall frisking § 87(2)(b) or § 87(2)(b) and denied searching them. Sgt. Hartnett did not state whether or not § 87(2)(b) or § 87(2)(b) was searched during the incident.

Patrol Guide Procedure 208-05 states that a frisk/field search of an arrested person is performed primarily to ensure the personal safety of the arresting officer (Board Review 11). Furthermore, the frisk should be conducted before or immediately after the subject is rear handcuffed.

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**Allegation I –Discourtesy: At the 23rd Precinct stationhouse, Police Officer Daniel Callinan spoke discourteously to § 87(2)(b)**

It is undisputed that PO Callinan had a conversation with § 87(2)(b) at the 23<sup>rd</sup> Precinct stationhouse holding cells. § 87(2)(g)

In his CCRB testimony, § 87(2)(b) stated that while he was at the stationhouse, he PO Callinan and § 87(2)(b) “exchanged words” (Board Review 01). However, he did not recall the context of their conversation. § 87(2)(b) stated that § 87(2)(b) was cursing at PO Callinan and he recalled PO Callinan telling § 87(2)(b) “Suck my dick.”

As stated above, § 87(2)(b) did not provide a statement to the CCRB.

The investigation determined that § 87(2)(b) was not present in the 23<sup>rd</sup> Precinct stationhouse during this incident (Board Review 06).

In his CCRB testimony, PO Callinan stated that while in the stationhouse, he informed § 87(2)(b) that he had an open warrant (Board Review 02). In response, § 87(2)(b) said, “Bullshit, I don’t have a warrant and I have not been in trouble in forever.” When PO Callinan presented the warrant to PO Callinan, § 87(2)(b) told him, “Fuck you.” PO Callinan denied telling § 87(2)(b) “Suck my dick,” and denied using any profanities.

In their CCRB testimonies, Sgt. Hartnett and PO Rivera both denied hearing any conversation between PO Callinan and § 87(2)(b) in regards to an open warrant (Board Review 04 and 05). Sgt. Hartnett and PO Rivera also denied hearing PO Callinan saying, “Suck my dick,” or speaking discourteously towards § 87(2)(b)

§ 87(2)(g)

**Allegation J –Discourtesy: At the 23rd Precinct stationhouse, Police Officer Daniel Callinan issued a summons to § 87(2)(b)**

**Allegation K –Discourtesy: At the 23rd Precinct stationhouse, Sergeant Joseph Hartnett supervised the issuance of a summons to § 87(2)(b)**

**Allegation L –Discourtesy: At the 23rd Precinct stationhouse, Police Officer Daniel Callinan arrested § 87(2)(b)**

**Allegation M –Discourtesy: At the 23rd Precinct stationhouse, Sergeant Joseph Hartnett supervised the arrest of § 87(2)(b)**

During his CCRB interview, PO Callinan admitted that § 87(2)(b) and § 87(2)(b) were only being arrested for the violation of trespassing after he questioned them and determined that they did not have any business in the building, and were not being arrested for any other offenses (Board

Review 01). As stated above, PO Callinan and PO Rivera both stated in their CCRB testimonies that § 87(2)(b) and § 87(2)(b) were approached inside the lobby of 60 East 102<sup>nd</sup> Street. However, Sgt. Hartnett and § 87(2)(b) both stated that § 87(2)(b) and § 87(2)(b) were approached outside of the location.

In his CCRB statement, Sgt. Hartnett stated that he was informed by PO Callinan that § 87(2)(b) and § 87(2)(b) were going to be placed under arrest for trespassing and Sgt. Hartnett acknowledged that he verified the arrests by speaking with PO Callinan that they were not guests or tenants of the building and were not visiting anyone (Board Review 05). In his CCRB statement, PO Rivera stated that § 87(2)(b) and § 87(2)(b) were handcuffed within seconds after they approached them (Board Review 04). During his CCRB interview, PO Rivera stated that he “guessed” that § 87(2)(b) and § 87(2)(b) were placed under arrest for trespassing because they did not live in the building. However, PO Rivera stated that he did not have any reason to suspect that § 87(2)(b) or § 87(2)(b) did not live in the building.

A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property where the building is utilized as an elementary or secondary school or a children’s overnight camp as defined in section one thousand three hundred ninety-two of the public health law or a summer day camp as defined in section one thousand three hundred ninety-two of the public health law in violation of conspicuously posted rules or regulations governing entry and use thereof, NY Penal Law §140.10 (b) (Board Review 09).

§ 87(2)(g)

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§ 87(4-b) § 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date